



January 19, 2023

To: Workers' Compensation Board Members & Workers' Compensation Community

From: Terry Bello, Administrative Services Division Manager and Constance L. Wold, Workers' Compensation Board Chair

Subject: Attorney Fee Report

This annual report includes attorney fees WCB awarded in the 2021 calendar year. We anticipate that we will be back on track to produce the next annual report (which will include 2022 data) by June, 2023.

Background: In 2015, the Oregon Legislature made significant modifications to statutory provisions related to attorney fee awards made to attorneys representing injured workers, including mandating that the Workers' Compensation Board review all attorney fee schedules biennially for adjustment, considering the contingent nature of the practice of workers' compensation law and the necessity of allowing the broadest possible access to attorneys by injured workers, while giving consideration to fees earned by attorneys for insurers and self-insured employers.

In 2015, WCB engaged in rulemaking to implement the statutory changes. In 2016, WCB engaged in further rulemaking in response to proposed attorney fee rule concepts. WCB utilized advisory committees and worked with DCBS IT&R<sup>1</sup> to compile data relevant to its biennial attorney fee review and rulemaking, and provided the resulting data to its advisory committees.

Commencing in August, 2018, WCB sought wide public participation to conduct the next biennial review. Written comments, rule proposals, and oral testimony were received prior to and during a public board meeting on December 11, 2018. At the meeting, the Board voted to move several rule concepts to the advisory committee process, and invited further ongoing public comment. WCB continued working with DCBS IT&R, and utilized internal resources, resulting in two attorney fee reports providing relevant data to the advisory committee, including data responsive to the advisory committee's requests.

After the advisory committee report was issued, in December, 2019, WCB moved into formal rule making, and continued to work with its internal resources, including WCB's litigation coder, and IT&R, to produce a comprehensive attorney fee report including the key data both germane under the statutory factors, and also responsive to the public testimony and written comments. The resultant attorney fee report was published on June 12, 2020, and included data through calendar year 2019. This report was viewed as setting benchmarks which could be used thereafter, to be updated annually.

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<sup>1</sup> IT&R is the Information Technology & Research Division at the Department of Consumer & Business Services (DCBS) who support WCB's operations.

After publication of the June 12, 2020, report, WCB continued the process of capturing its key data elements manually and pursued a data base enhancement to eliminate the staff time involved in the manual process. The biennial review process which had commenced in 2018, and which was prolonged due to both the robust community engagement in the rulemaking process, and the pandemic, culminated in WCB’s permanent adoption of rules in June, 2020, and in October, 2020. In November, 2020, WCB announced that it would take up the next biennial review at its December 15, 2020 Board meeting. At that meeting, after discussion and public comment, the members voted to allow more time to pass, given the recent extensive and lengthy biennial review culminating in rules whose effect would take time to assess. There was also consensus to defer review, pending the appointment of the next member with a background and understanding of employee concerns, as one board position was vacant. On August 11 2021, WCB published the annual attorney fee report, updated to include data through calendar year 2020.

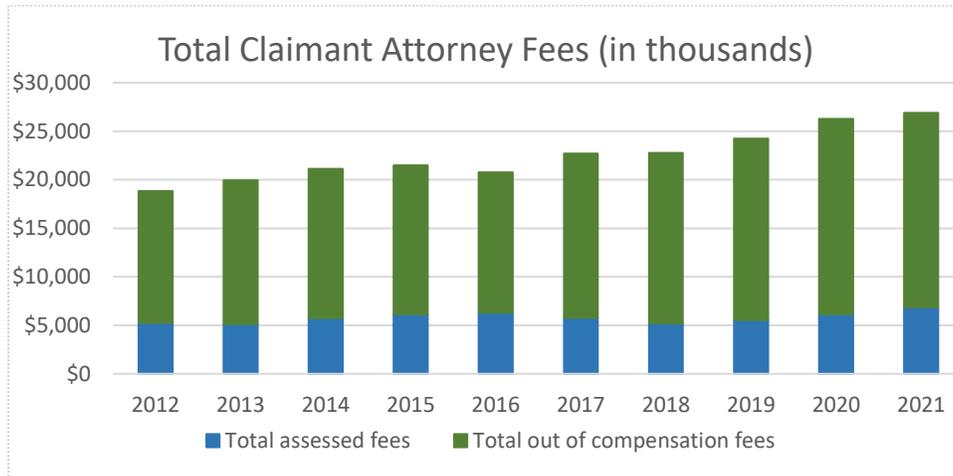
We thank and acknowledge all involved staff at DCBS IT&R, and WCB’s litigation coder and web coding specialist, without whose precise work and dedication this report of the attorney fees awarded by WCB in 2021 would not be possible.

**Attorney Fee Awards by WCB (in thousands)**  
Includes Hearings and Board Review

<b>Year</b>	<b>Total out of compensation fees</b>	<b>Total assessed fees</b>	<b>Total claimant attorney fees</b>
2012	\$13,579	\$5,249	\$18,828
2013	\$14,817	\$5,132	\$19,949
2014	\$15,366	\$5,751	\$21,117
2015	\$15,348	\$6,132	\$21,480
2016	\$14,486	\$6,285	\$20,771
2017	\$16,912	\$5,779	\$22,691
2018	\$17,578	\$5,196	\$22,774
2019	\$18,692	\$5,555	\$24,247
2020	\$20,130	\$6,143	\$26,273
2021	\$20,044	\$6,859	\$26,793

This is a summary of all fees awarded by WCB. It includes “assessed” fees awarded at hearing and on board review and all “out-of-compensation” fee awards. Disputed claim settlements (DCS) and claims disposition agreements (CDA) are collected in the “out-of-compensation” column. Stipulations may include “out-of-compensation” or “assessed” awards, depending on the terms of the agreement. These totals do not include any fee awards granted by the Workers’ Compensation Division (WCD).

## All Attorney Fee Awards by WCB (includes settlements)



This is a graphic representation of all attorney fee awards by WCB.

### Assessed fees at hearing - all cases, including stipulations

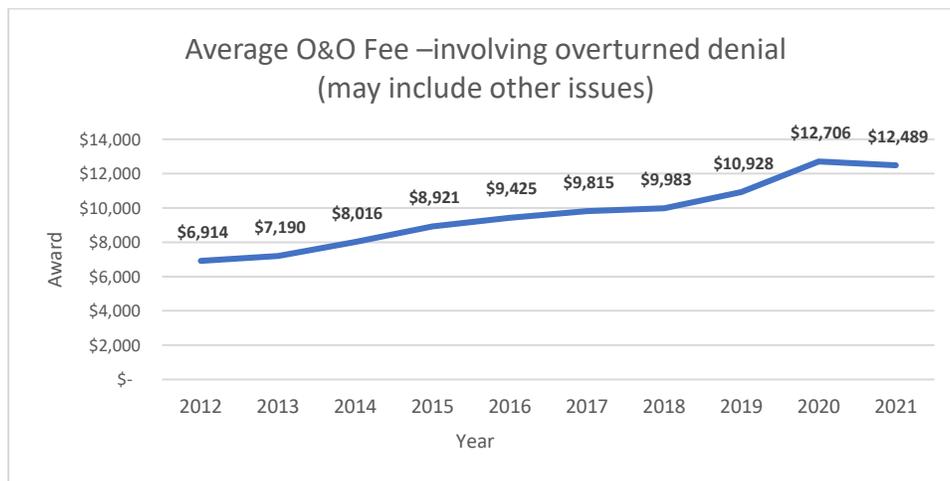
<b>Assessed Attorney Fees at Hearings, 2015-2021</b>					
Year	WCB Cases #s	Orders	Total fees	Avg. Attorney fees	
				by case	by order
2015	1,130	1,104	\$5,459,504	\$4,831	\$4,945
2016	1,210	1,168	\$5,806,272	\$4,799	\$4,971
2017	1,089	1,048	\$5,369,969	\$4,931	\$5,124
2018	982	951	\$5,083,833	\$5,178	\$5,346
2019	986	934	\$5,037,838	\$5,109	\$5,394
2020	978	893	\$5,519,326	\$5,643	\$6,181
2021	944	886	\$5,823,971	\$6,169	\$6,573

This chart shows “assessed” fee awards from the Hearings Division, including Opinion and Orders and Stipulations that grant an “assessed” fee. On the far right of the chart, we have broken down the fee awards on a “per WCB case #” and “per order” basis. Some orders include multiple case numbers and issues.

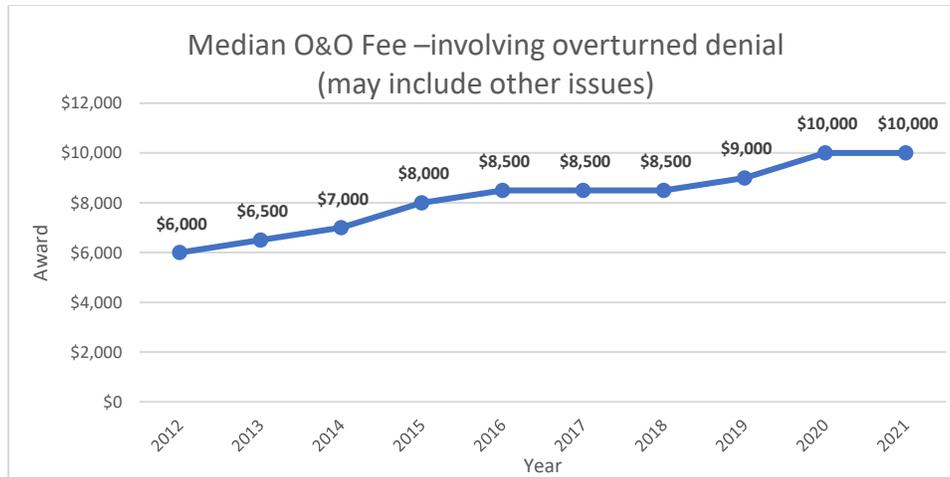
## Attorney fee awards - claim denial O&Os

Year	Orders in which one or more denials are overturned (O&Os)*					
	Orders	Total	Average	Median	Maximum	Minimum
2012	313	\$ 2,164,050	\$ 6,914	\$ 6,000	\$ 40,000	\$ 1,000
2013	267	\$ 1,919,626	\$ 7,190	\$ 6,500	\$ 25,000	\$ 1,000
2014	294	\$ 2,356,786	\$ 8,016	\$ 7,000	\$ 30,000	\$ 2,000
2015	298	\$ 2,658,555	\$ 8,921	\$ 8,000	\$ 43,334	\$ 1,000
2016	240	\$ 2,262,079	\$ 9,425	\$ 8,500	\$ 35,600	\$ 500
2017	197	\$ 1,933,647	\$ 9,815	\$ 8,500	\$ 28,500	\$ 3,000
2018	185	\$ 1,846,783	\$ 9,983	\$ 8,500	\$ 30,000	\$ 1,500
2019	162	\$ 1,770,358	\$ 10,928	\$ 9,000	\$ 48,000	\$ 500
2020	144	\$ 1,829,734	\$ 12,706	\$ 10,000	\$ 58,333	\$ 500
2021	173	\$ 2,160,538	\$ 12,489	\$ 10,000	\$ 32,500	\$ 300

This chart provides a history of fee awards in O&Os involving an overturned denial. Additional issues may be involved in those cases, such as penalties. WCB captures only the global fee award at the hearing, so the fees may reflect work on companion issues to the denial. This chart does not reflect whether the fees were reversed or modified at subsequent levels of appeal. It simply shows the fee awarded by the Hearings Division.



This is a graphic representation of the “average” fee in an O&O involving overturned denials.

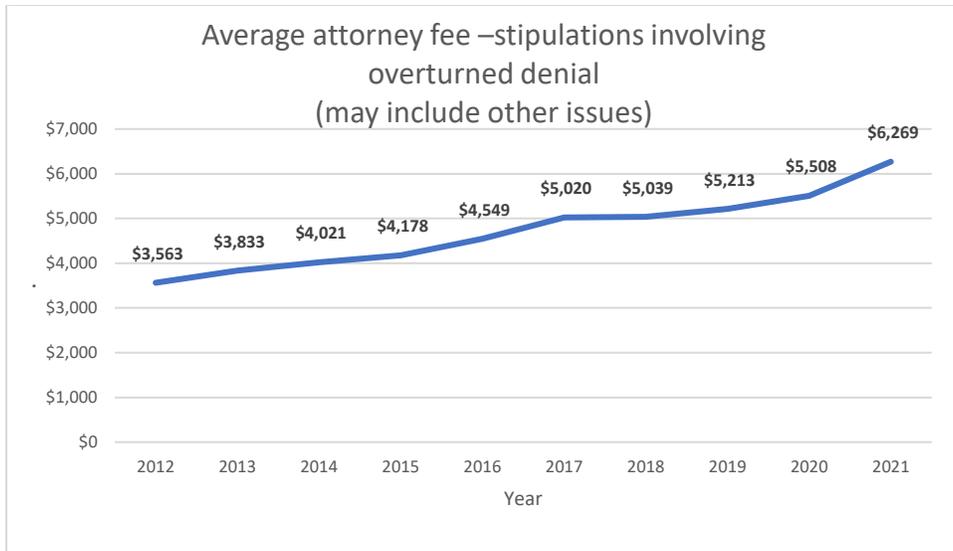


This is a graphic representation of the “median” fee in an O&O involving overturned denials.

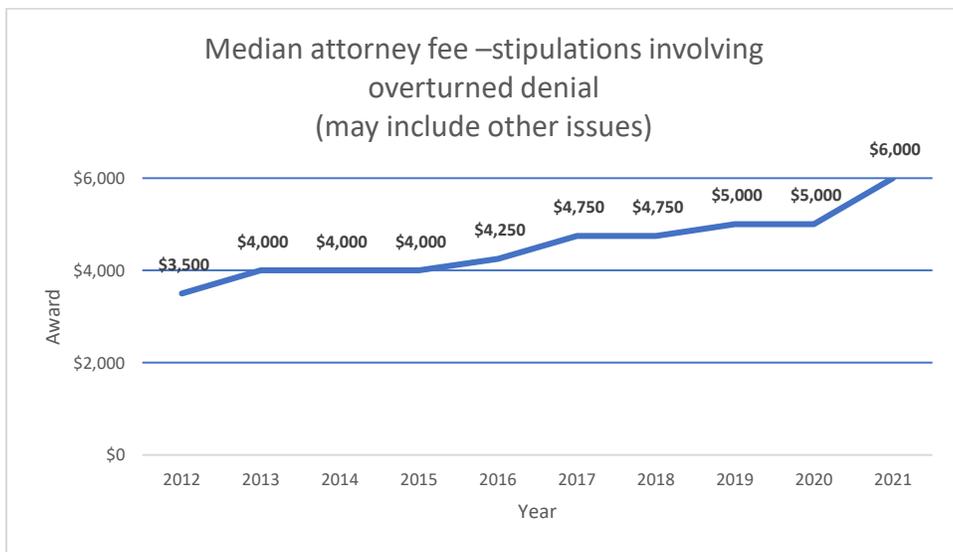
### Attorney fee awards - stips with denial rescinded

Year	Orders in which one or more denials are overturned (Stipulations)*					
	Orders	Total	Average	Median	Maximum	Minimum
2012	452	\$ 1,610,656	\$ 3,563	\$ 3,500	\$ 10,000	\$ 500
2013	464	\$ 1,778,425	\$ 3,833	\$ 4,000	\$ 12,000	\$ 250
2014	471	\$ 1,894,000	\$ 4,021	\$ 4,000	\$ 16,000	\$ 250
2015	400	\$ 1,671,258	\$ 4,178	\$ 4,000	\$ 18,000	\$ 200
2016	320	\$ 1,455,577	\$ 4,549	\$ 4,250	\$ 16,000	\$ 150
2017	342	\$ 1,716,950	\$ 5,020	\$ 4,750	\$ 40,000	\$ 500
2018	296	\$ 1,491,442	\$ 5,039	\$ 4,750	\$ 20,000	\$ 500
2019	281	\$ 1,464,992	\$ 5,213	\$ 5,000	\$ 18,000	\$ 100
2020	328	\$ 1,806,521	\$ 5,508	\$ 5,000	\$ 15,000	\$ 500
2021	268	\$ 1,680,129	\$ 6,269	\$ 6,000	\$ 20,000	\$ 500

Some denials are overturned by a stipulation (rescission of denial). This chart shows the fee awards contained in such settlement agreements approved by WCB. The settlement and fee awards may include other issues besides a denial. While most of these are likely “pre-hearing” rescissions, some may be rescissions following a hearing or board order. The fee awards in this chart reflect the amounts contained in the stipulated settlement agreement.

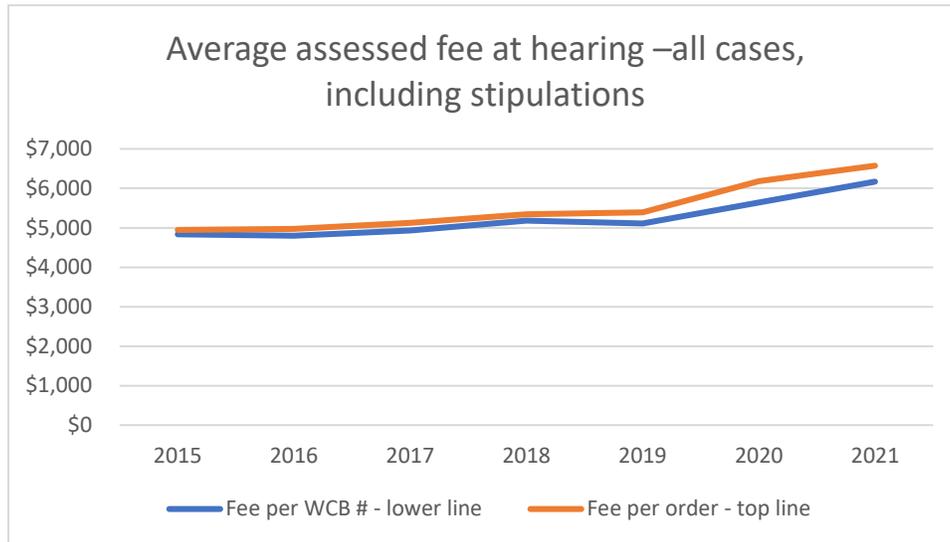


This is a graph of the “average” fee in a stipulation involving an overturned denial.

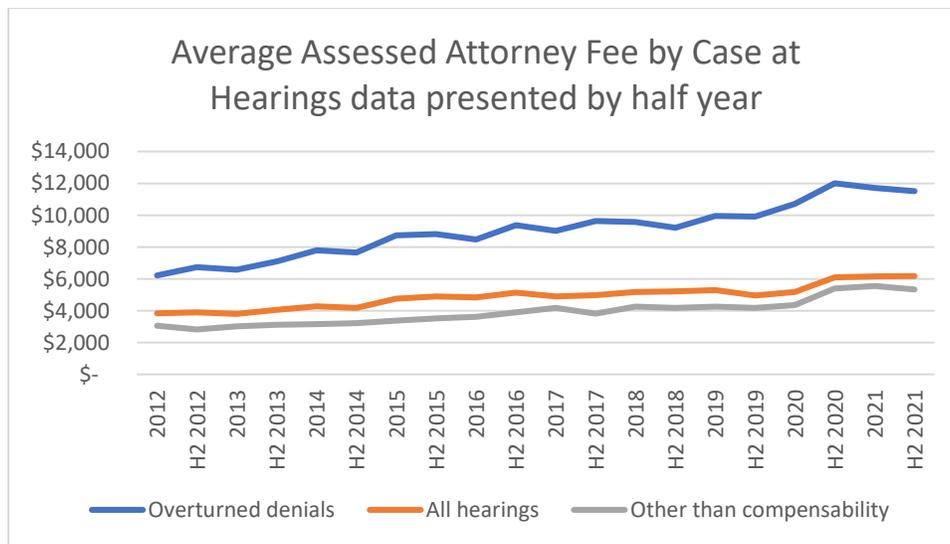


This is a graph of the “median” fee in a stipulation involving an overturned denial.

## Average assessed fee award at hearing— including stipulations

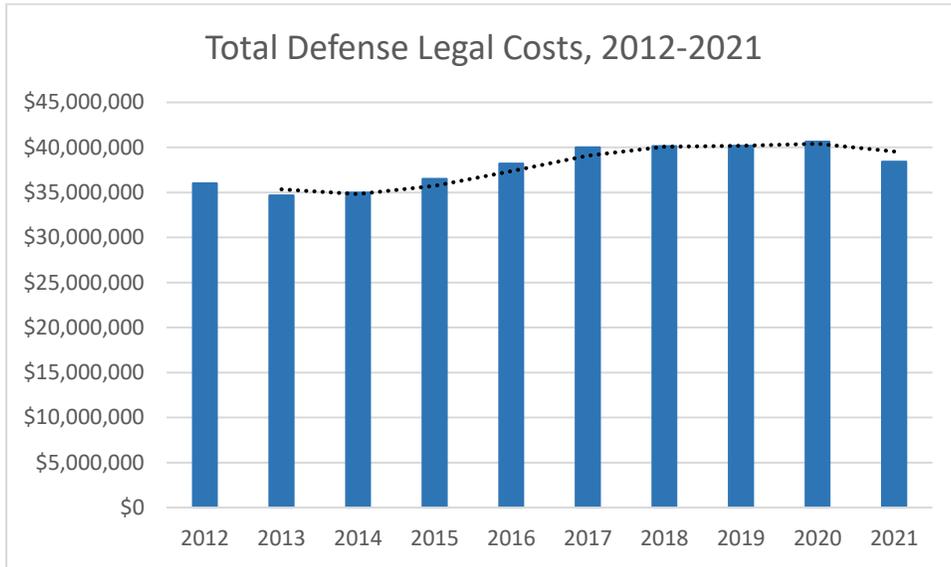


This graph shows the average “assessed” fee awarded at Hearings Division (orders and stipulations combined). The orange (top) line shows the fees per order (which may involve multiple case numbers), while the blue (lower) line reflects the fees per WCB number.

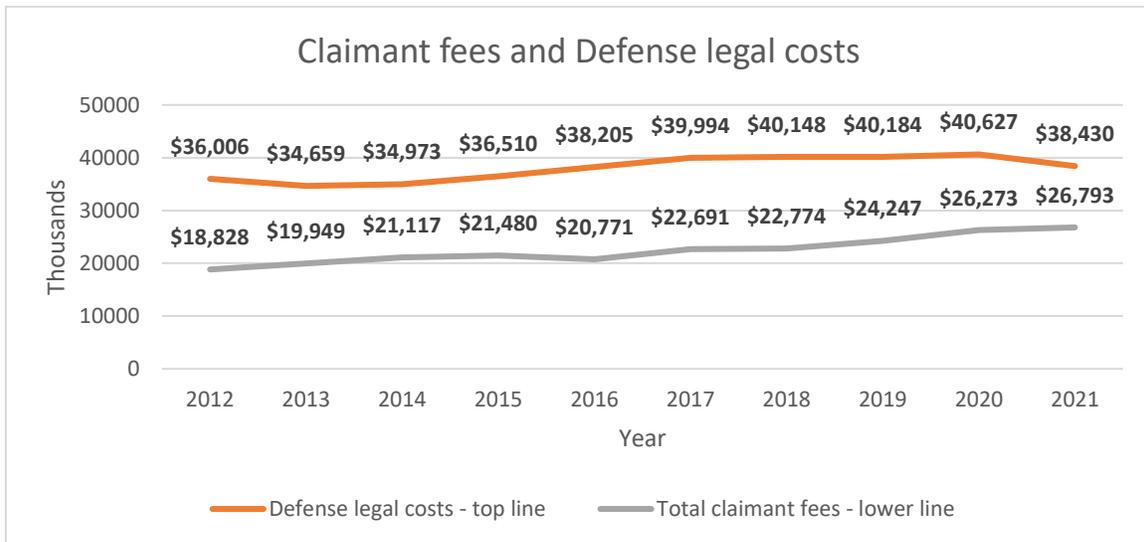


This line graph shows the development of “average” assessed attorneys per WCB #. The blue (top) line shows cases involving overturned denials (which may include other issues), the grey (bottom) line is for WCB #s other than “compensability” (denials) and the orange (middle) line includes all types of WCB #s (a combination of the other two lines). Note: “H2” denotes the second half of a given year.

## Comparison - Defense Legal Costs and Claimant Attorney Fees

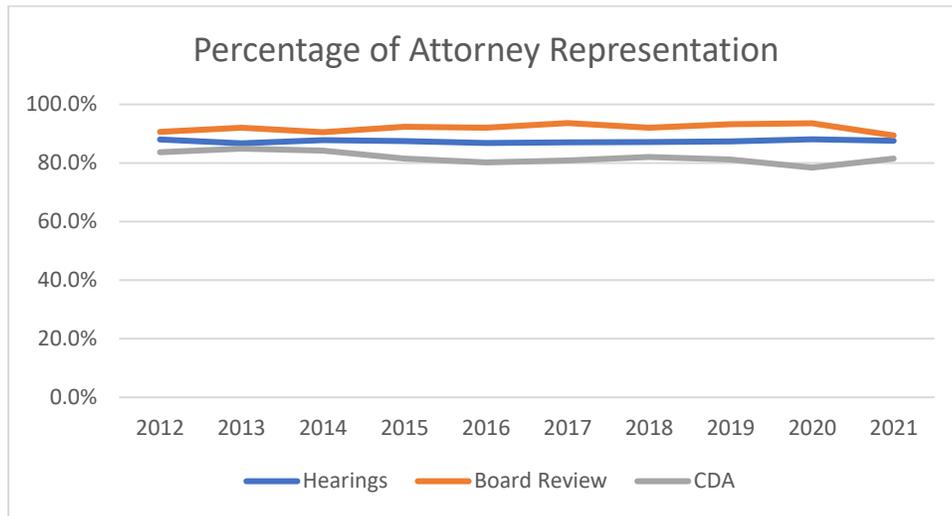


This is a bar chart of defense legal costs, as self-reported by insurance carriers and self-insured employers (including third party administrators) to WCD. These totals may include legal costs associated with activities unconnected to WCB cases, such as litigation at the Workers' Compensation Division.



This is a same-page comparison of the changes in total claimant attorney fees and the changes in defense legal costs.

## Claimant Attorney Representation – WCB Litigation and CDAs



This is a line graph showing the percentage of cases involving attorney representation for claimants at the time of the first order at the hearings level (blue or middle line) and the first order at the board review level (orange or top line). For CDAs (grey or bottom line), we capture whether claimant was represented at the time of the submission/request for approval.

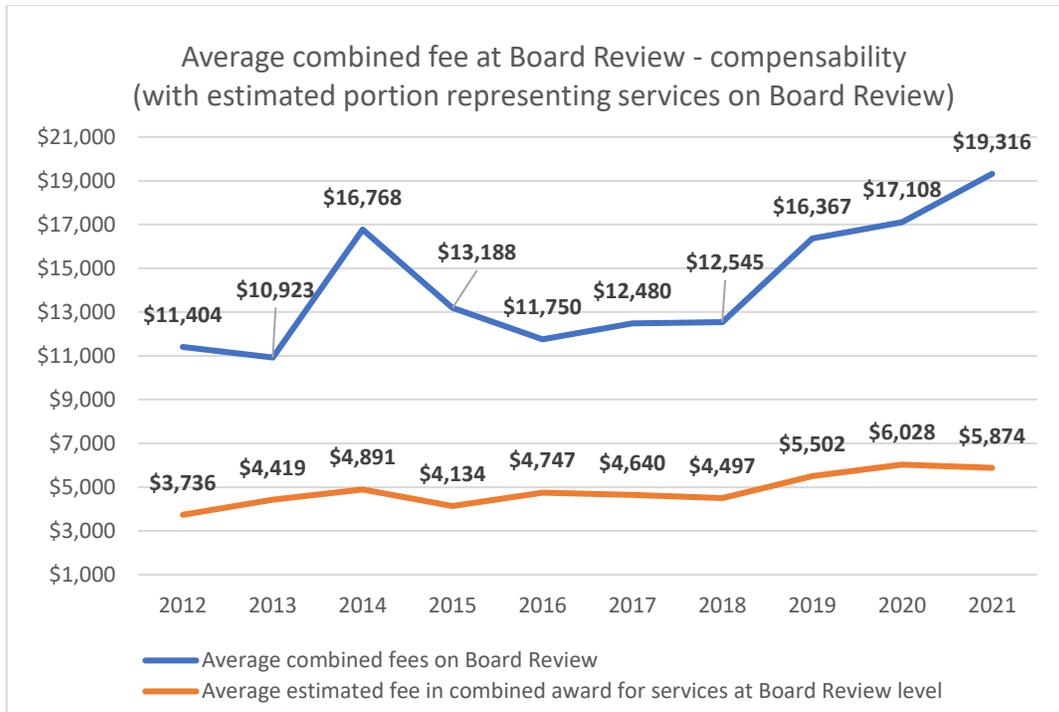
## Average Combined\* Assessed Fees – Compensability at Board Review

(\*Orders on Review awarding fees for services at hearing and services on review)

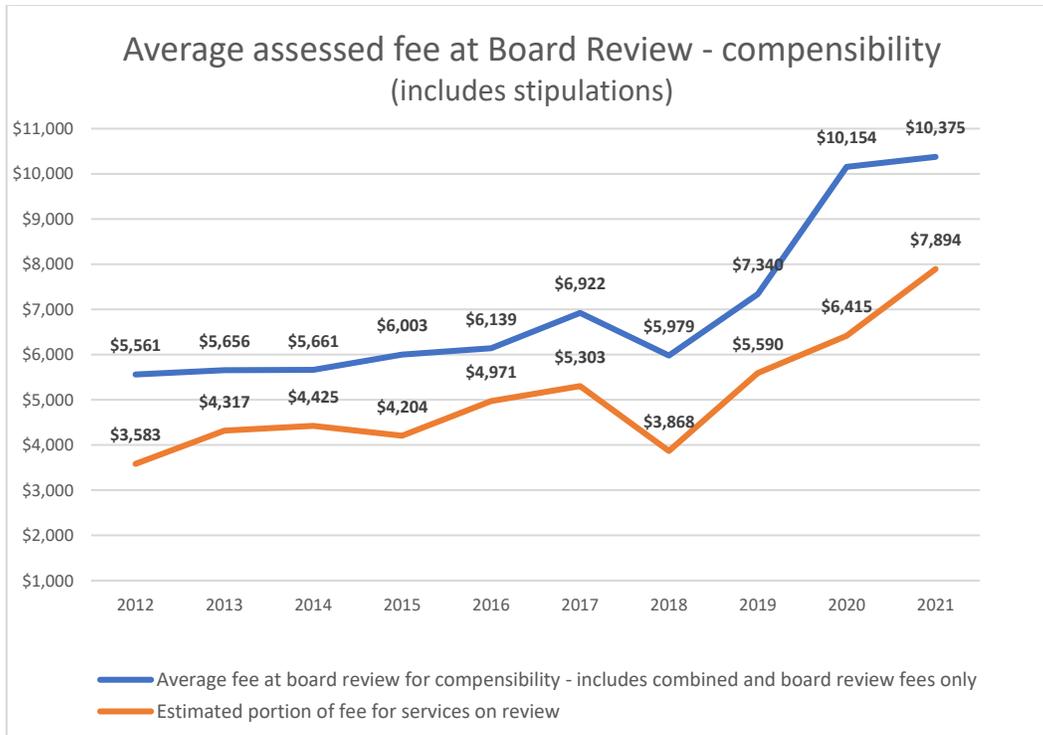
Year	Average combined fees per Board order	Estimated portion of fee for services on review
2012	\$11,404	\$3,736
2013	\$10,923	\$4,419
2014	\$16,768	\$4,891
2015	\$13,188	\$4,134
2016	\$11,750	\$4,747
2017	\$12,480	\$4,640
2018	\$12,545	\$4,497
2019	\$16,367	\$5,502
2020	\$17,108	\$6,028
2021	\$19,316	\$5,874

-Does not include stipulated attorney fees

Attorney fees awarded at board review may include services at hearing (when a decision is reversed in favor of the claimant), which can inflate the apparent “average board fee” award. Since fee awards are not broken down into separate awards for hearing and review in a “combined fee” award, we provide this estimate calculated by DCBS Research, using WCB’s hand count project and historical data. In general, services at hearing represent about 2/3 of a “combined fee,” with services on review representing 1/3.

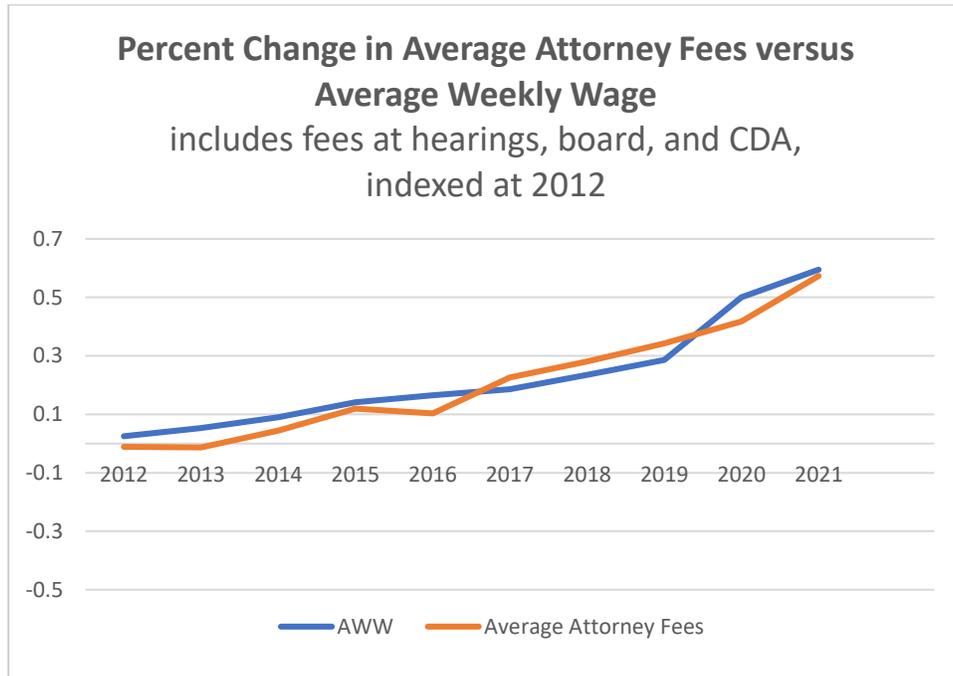


To further illustrate the average attorney fee awards for Orders on Review in compensability cases, other than stipulated attorney fees, we have prepared the above graph. The top (blue) line is an average of “combined” fee awards. The bottom (orange) line is an estimation of the portion of those “combined” fee awards representing attorney services on board review. Fluctuations in the yearly averages can occur due to the relatively low volume of cases on board review.



This chart shows the average assessed Board fee award for cases that involve full or partial denials of compensability. It includes orders and stipulations. The top (blue) line is an average that is inclusive of “combined fee” awards and “board review only” awards. The bottom (orange) line is an average of the estimated portion of the fees awarded for services on “board review only.” As noted previously, this estimate is created by DCBS Research, using WCB’s hand count project and historical data.

## Comparison of Claimant Attorney Fees and AWW



To determine whether the changes in claimant attorney fee awards have tracked with overall changes in economic growth in Oregon, we have produced a graph comparing the average attorney fee award per case against the changes in the state average weekly wage (AWW) as determined by the Oregon Employment Department. Choosing a baseline of 2012, the average awarded attorney fees per case (at any level, including settlements) is plotted against the year-over-year percent increase in the AWW. The state AWW increased 14.059% in 2021.

## Going to hearing

- The chart below shows % of orders in which the fee is greater than zero
- The chance of getting some type of attorney fee is about 40 percent

Year	Percentage of orders with fees				Average fee including when none is awarded
	O&Os	Out of Comp	Assessed	All Fees	
2015	1002	4.2%	40.2%	44.4%	\$3,146
2016	891	3.1%	40.7%	43.9%	\$3,310
2017	790	1.5%	39.4%	40.9%	\$3,208
2018	752	1.3%	39.2%	40.6%	\$3,259
2019	715	2.4%	36.8%	39.2%	\$3,158
2020	667	1.6%	37.5%	39.1%	\$3,657
2021	721	1.2%	37.4%	38.7%	\$3,735

WCB does not specifically track “wins and losses” in its orders. Each litigated matter may have multiple issues, with a variety of outcomes per decision. WCB does track, however, whether an O&O resulted in an attorney fee. To the extent that an attorney fee award can be considered at least a partial “win,” we produced this data showing the percentage of O&O decisions in which a fee was awarded. The percentage of decisions in which a fee (of any amount) is awarded has been about 40 percent over the last five years. The final column in this chart shows the “average” fee when all O&Os are calculated (including orders where no fee is awarded). As shown, a claimant attorney’s average fee for taking a case to an O&O, when both wins and losses are considered, is now \$3,735.